

NIH Grants Policy Statement (12/03)

Part II: Terms and Conditions of NIH Grant Awards

Subpart A: General -- File 5 of 5

Source:

http://grants2.nih.gov/grants/policy/nihgps_2003/NIHGPS_Part8.htm#_Toc54600145

Enforcement Actions

A grantee's failure to comply with the terms and conditions of award, including confirmed instances of research misconduct, may cause NIH to take one or more enforcement actions, depending on the severity and duration of the non-compliance. NIH will undertake any such action in accordance with applicable statutes, regulations, and policies. NIH generally will afford the grantee an opportunity to correct the deficiencies before taking enforcement action unless public health or welfare concerns require immediate action. However, even if a grantee is taking corrective action, NIH may take proactive action to protect the Federal government's interests, including placing special conditions on awards or precluding the grantee from obtaining future awards for a specified period, or may take action designed to prevent future non-compliance, such as closer monitoring. If NIH imposes sanctions on a grantee as a result of research misconduct or will more closely monitor an award(s) through the use of special conditions, NIH will share this information with other HHS components.

Modification of the Terms of Award

During grant performance, the GMO may include special conditions in the award to require correction of identified financial or administrative deficiencies. When the special conditions are imposed, the GMO will notify the grantee of the nature of the conditions, the reason why they are being imposed, the type of corrective action needed, the time allowed for completing corrective actions, and the method for requesting reconsideration of the conditions. See 42 CFR 52.9 and 45 CFR 74.14 or 92.12.

The awarding office also may withdraw approval of the PI or other key personnel if there is a reasonable basis to conclude that the PI and other key personnel are no longer qualified or competent to perform. In that case, the awarding office may request that the grantee designate a new PI or other key personnel.

The decision to modify the terms of an award—by imposing special conditions, by withdrawing approval of the PI or other key personnel, or otherwise—is discretionary on the part of the NIH awarding office.

Suspension, Termination, and Withholding of Support

If a grantee has failed to materially comply with the terms and conditions of award, NIH may suspend the grant, pending corrective action, or may terminate the grant for cause. The regulatory procedures that pertain to suspension and termination are specified in 45 CFR 74.61 and 74.62, and in 92.43.

NIH generally will suspend (rather than immediately terminate) a grant and allow the grantee an opportunity to take appropriate corrective action before NIH makes a termination decision. NIH may decide to terminate the grant if the grantee does not take appropriate corrective action during the period of suspension. NIH may terminate—without first suspending—the grant if the deficiency is so serious as to warrant immediate termination or public health or welfare concerns

require immediate action. Termination for cause may be appealed under the NIH and HHS grant appeals procedures (see [“Administrative Requirements—Grant Appeals Procedures”](#)). Pending the outcome of an appeal or other action by the grantee, NIH may award a replacement grant for a limited period of time (up to 18 months) without competition.

A grant also may be terminated, partially or totally, by the grantee or by NIH with the consent of the grantee. If the grantee decides to terminate a portion of a grant, NIH may determine that the remaining portion of the grant will not accomplish the purposes for which the grant was originally awarded. In any such case, NIH will advise the grantee of the possibility of termination of the entire grant and allow the grantee to withdraw its termination request. If the grantee does not withdraw its request for partial termination, NIH may initiate procedures to terminate the entire grant for cause.

See [“Cost Considerations—Selected Items of Cost”](#) for the allowability of termination costs. Allowability of these costs does not vary whether a grant is terminated for cause by NIH, terminated at the request of the grantee, or terminated by mutual agreement.

Withholding of support is a decision not to make a non-competing continuation award within the current competitive segment. Support may be withheld for one or more of the following reasons:

- Adequate Federal funds are not available to support the project.
- A grantee failed to show satisfactory progress in achieving the objectives of the project.
- A grantee failed to meet the terms and conditions of a previous award.
- For whatever reason, continued funding would not be in the best interests of the Federal government.

If a non-competing continuation award is denied (withheld) because the grantee failed to comply with the terms and conditions of a previous award, the grantee may appeal that determination.

Other Enforcement Actions

Depending on the nature of the deficiency, NIH may use other means of obtaining grantee compliance. Other options available to NIH include, but are not limited to, temporary withholding of payment or other actions specified at 45 CFR 74.62 or 92.43, conversion from an advance payment method to a reimbursement method, suspension or debarment under 45 CFR Part 76, and other available legal remedies, such as civil action. Suspension under 45 CFR Part 76 is a distinct action from “suspension” as a post-award remedy described under [“Suspension, Termination, and Withholding of Support”](#) in this subsection. The subject of debarment and suspension as an eligibility criterion is addressed in [“Completing the Pre-Award Process—Eligibility”](#) and [“Public Policy Requirements and Objectives—Ethical and Safe Conduct in Science and Organizational Operations—Debarment and Suspension.”](#)

Recovery of Funds

NIH may administratively recover funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms and conditions of the award, including misspent funds or unallowable costs incurred. If the grantee does not pay back the funds in accordance with the demand by the awarding office, which specifies the period of time for repayment, the awarding office may collect the debt by

- making an administrative offset against payments that would be due under other grant awards,

- withholding advance payments that would otherwise be due, or
- taking any other action permitted by statute.

Debt Collection

The Federal Debt Collection Act (Act) (31 U.S.C. 3711) and the Federal Claims Collection Standards (4 CFR Parts 101-105) require NIH to collect debts due to the Federal government and, except where prohibited by law, to charge interest on all delinquent debts owed to NIH by grantees (also see HHS claims collection regulations at 45 CFR Part 30). Debts may result from cost disallowances, recovery of funds, unobligated balances, or other circumstances.

Unless otherwise specified in law, regulation, or the terms and conditions of the award, debts are considered delinquent 30 days after notification to the grantee of the indebtedness. The interest on delinquent debts will be computed from the original notification date to the grantee of the indebtedness. The interest rate applied will be the current value of funds rate or the private consumer rate of interest fixed by Treasury, whichever is higher. A higher rate may be charged if necessary to protect the interests of the Federal government.

Penalties and administrative collection costs also will be charged in accordance with the Act and the implementing HHS regulations, as follows:

- A penalty charge of 6 percent a year will be assessed on debts that are more than 90 days overdue. Penalty charges will accrue from the date the debt became overdue until the indebtedness is paid.
- Delinquent debtors will be assessed charges to cover the Federal government's administrative costs of collecting overdue debts. From time to time, HHS will publish a notice in the *Federal Register* setting forth the amounts to be assessed for administrative collection costs.

If a grantee appeals an adverse monetary determination under 42 CFR Part 50, Subpart D, or 45 CFR Part 16, collection will be suspended pending a final decision on the appeal. If the determination is sustained (either fully or partially), interest will be charged beginning with the date of the original notification to the grantee of the indebtedness.